

**United States District Court  
District of Massachusetts**

<b>Paul W McCree, Jr.,</b>	)	
	)	
<b>Plaintiff</b>	)	<b>Civil Action NO. 04-11334JLT</b>
	)	
<b>v.</b>	)	
	)	
<b>Pension Benefit Guaranty</b>	)	
<b>Corporation,</b>	)	
	)	
<b>Defendant</b>	)	

**Motion for Supplemental Pleading  
to the  
Memorandum of Law in support of the Plaintiff's  
Motion for Summary Judgment**

**I. Purpose**

At no time in the history of the dispute between the parties has the Defendant ever questioned or challenged the Plaintiff about the authenticity and reliability of payroll check stub data as record of employment and salary history. Payroll check stub data is commonly used to verify employment and salary history in government, business, commerce and industry. This pleading is made to allay fear, suspicion or doubt as to the integrity of the data presented by the Plaintiff in support of his evaluation of the Average Monthly Earnings.

**II. Corroborative Sources**

It is my understanding that the employer's administrator of the HHA Plan was required by law to periodically file reports to PBGC on the status of the Plan in general and as it pertains to the salary and earnings history under the Plan for individual Participants.

The Plaintiff's corroborative sources are reviewed.

1.0 Correspondence with the Dept. Of Labor, Boston, MA. See Attachments (1.0) .

This correspondence is dated 03/18/91. It encloses record of the Plaintiff's earning provided by the employer, the H.H.A. Aerospace Design Co., Inc. The DOL in Boston was investigating the performance of HHA re the Fair Labor Standards. As shown in the letter, the

issue of concern was whether the company had withheld any of my pay checks. My response was yes, several. The company was subsequently sued by a number of employees disgruntled by not being compensated for entitled hours of service. This history verifies that the employer withheld wages from the Plaintiff among other employees at HHA. Furthermore, the Plaintiff's records of earnings provided by DOL for 1988, 1989 and 1990 all show that his hourly rate, for all of the months shown recorded, was \$35.00 /hour. This means that at 2080 hours /year, the Plaintiff's actual, yearly salary between 1988 and 1990 was \$72, 080.00 paid monthly at \$35.00 /hour.

#### 2.0 Correspondence with PBGC re. Application/Claim for Benefit See Attachments (2.0)

PBGC initiated this correspondence in a letter requesting copies of my W-2 Forms and for a brief review of my employment and salary history while employed at HHA. As shown in my response, Attachments (2.0) dated 06/09/1993, I provide a summary history which includes for each change of status the date, yearly salary and hourly rate. In addition, I report a summary showing monthly checks paid and monthly checks not received for accrued hours of service. The summary shows that I had not received 14 monthly checks between 1989 and 1991.

#### 3.0 Correspondence with HHA re. Promotion See Attachment (3.0)

As shown, this offer was made on 05/06/1987 . On 05/07/1987, I accepted the promotion with an increase from \$68,640.00 /yr. in 1986 to \$72,080.00 /yr. in 1987. This record coupled with the record of earnings provided from DOL shows that I was making \$68,640.00 in 1986 and \$72080.00 from 1997 through 1990. Based on these facts, my average yearly salary between 1986 and 1990 was \$71,968.00. Thus my average monthly earnings are \$71,968.00 /12 months equals \$5997.33

#### 4.0 Payroll Check Stubs See Attachments (4.0)

The payroll check stubs represent a salary of \$68,680.00 / year paid monthly at \$33.00 /hour for 12 months in 1986 and a salary of \$72,080.00 /year for four years between 1987 and 1990 all paid monthly at \$35.00 /hour. This corroborates that my average yearly salary earned for the five years between 1986 and 1990 was \$71,968.00 and that my actual, average monthly earnings were \$5997.33.

#### **IV. Conclusion**

The summary salary and employment history returned to PBGC as part of the Plaintiff's application and claim for benefit is entirely consistent with the payroll check stub data. Info provided by DOL Boston confirms that the salary level between 1988 and 1990 was at \$72080 paid monthly at \$35.00 /hour. The letter with offer of promotion with raise confirms that the Plaintiff's salary level in 1987 was \$72080.00 paid monthly at \$35.00 /hour. These facts corroborate and confirm that the check stub data provided by the Plaintiff is an accurate and reliable source for determining the Plaintiff's Average Monthly Earnings.

Respectfully submitted by:



Paul W. McCree, Jr.

Dated: 11/03/04

Cc: Sherease Pratt Louis  
Staff Attorney  
Office of the General Counsel  
Pension Benefit Guaranty Corporation

**Attachments (1.0)**  
**Correspondence with DOL**  
**re.**  
**Withheld Compensation**

**U.S. Department of Labor**

Employment Standards Administration

Wage and Hour Division

**J. W. McCormack Post Office and Courthouse, Room 806**

**Boston, MA 02109**

**(617) 223-9970**

**Fax 223-4121**



**Reply to the Attention of:**

**March 18, 1991**

**McCree, Paul W, Jr  
173 Goodman's Hill  
Sudbury MA 01776**


We are making an investigation of H. H. Aerospace to determine if it is complying with the requirements of the Fair Labor Standards Act. In doing so, it is customary to ask some of the present and former employees for certain information by direct correspondence. The fact that we are asking for this information does not imply that this firm has violated any law.

While you are not required to respond, we ask that you assist us by answering the questions below. Please respond within 3 days after you receive this request. A self addressed envelope which requires no postage is enclosed for your convenience.

Enclosed you will find a copy of your 1990 payroll record as submitted to this office by the firm. Please review it and indicate whether you have received all of the payments reported herein. If you have not received all of the payments, please identify which payments or portion of payments you have not received. Please add any detail of hours worked in 1991 that have not yet been paid.

Thank you for your cooperation in this investigation.

Very truly yours,

  
Patricia A. Slate  
Compliance Officer

# EMPLOYEE EARNINGS RECORD TO DATE

PAGE 160

COMPANY NUMBER 2683-10

COMPANY NAME HH AEROSPACE DESIGN CO INC

EMPLOYEE NAME & ADDRESS PAUL W MCCREE JR 173 GOODMAN'S HILL SUDBURY MA 01776	RATE 35,000 IDENT. 2	SALARY M	WKS M	EXEMPTIONS 3	STATE MA	SOC. SEC. NO. 013-16-4544	FED. ADD'L FEDERAL	STATE MA	CITY 11/19/84	RES. DATE HIRED	TERM DATE TERMINATED	BLOCK 12345678	IDENT. CODE 1 SPEC 2 SPEC 3
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DEPT	RATE	PAY DATE	WKS NO.	WKS MONTHLY	REG HOURS	OT HOURS	HOL HOURS	VAC HOURS	OTHER HOURS	REG EARNINGS	OT EARNINGS	HOL EARNINGS	VAC EARNINGS	OTHER EARNINGS	GROSS EARNINGS	FED TAX	FICA TAX	ST TAX
3	35000	1/09/82	1	1	1600	0	1600	0	0	644000	0	56000	0	0	644000	127324	48364	28032
3	35000	2/06/82	2	2	1600	0	1600	0	0	532000	0	56000	0	0	588000	111644	44159	25442
3	35000	3/05/82	3	3	1600	0	1600	0	0	420000	0	56000	0	0	476000	111644	44159	25442
1ST QUARTER 1982 TOTAL					4800	0	4800	0	0	1596000	0	168000	0	0	1764000	350612	136682	78916
3	35000	4/09/82	4	4	1600	0	1600	0	0	644000	0	56000	0	0	644000	127324	48364	28032
3	35000	5/07/82	5	5	1600	0	1600	0	0	588000	0	56000	0	0	644000	111644	44159	25442
3	35000	6/04/82	6	6	1600	0	1600	0	0	588000	0	56000	0	0	644000	111644	44159	25442
2ND QUARTER 1982 TOTAL					4800	0	4800	0	0	1820000	0	168000	0	0	1988000	358452	138785	82524
3	35000	7/09/82	7	7	1600	0	1600	0	0	616000	0	56000	0	0	616000	119484	46262	29050
3	35000	8/12/82	8	8	1600	0	1600	0	0	560000	0	56000	0	0	616000	111644	44159	25442
3	35000	9/16/82	9	9	1600	0	1600	0	0	644000	0	56000	0	0	644000	127324	48364	28032
3RD QUARTER 1982 TOTAL					4800	0	4800	0	0	1820000	0	168000	0	0	1988000	358452	138785	82524
3	35000	10/14/82	10	10	1600	0	1600	0	0	420000	0	56000	0	0	476000	119484	46262	29050
3	35000	11/18/82	11	11	1600	0	1600	0	0	525000	0	56000	0	0	581000	111644	44159	25442
3	35000	12/20/82	12	12	1600	0	1600	0	0	560000	0	56000	0	0	616000	127324	48364	28032
4TH QUARTER 1982 TOTAL					4800	0	4800	0	0	1505000	0	168000	0	0	1673000	350612	136682	78916
YEAR TO DATE 1982					6400	0	6400	0	0	6741000	0	2240000	0	0	8981000	1418128	534532	334340

NOT RECEIVED IN 1988  
ADJ = CHECKS CARRIED OVER FROM 1987 or PRIOR

FICA MUST BE GROSS X .0751%  
ADJUSTMENTS ARE MADE THRU FEDERAL WITHHOLDINGS

Payments for December, November & October have not been received!

ANY QUESTIONS PLEASE SEE BARRY MARTIN



**EMPLOYEE EARNINGS RECORD TO DATE**

## INTERSPACE DESIGNING

COMPANY NAME

**COMPANY NAME**

2683-15

101-1892



**Attachments (2.0)**  
**Correspondence with PBGC**  
**Re.**  
**Salary History**  
**and**  
**Withheld Compensation**

173 Goodman's Hill Road  
POB 77  
Sudbury, MA 01776  
June 9, 1993

The Pension Benefit Guaranty Corporation  
2020 K Street, N. W.  
Washington, D. C. 20006-1860

Attention:

Ms. Vicki Southard  
Auditor/Case Officer  
(202)778 8871 ext.3989

Reference:

H.H. Aerospace Design Co., Inc. Pension Plan  
Case Number 15843900

Dear Ms. Southard;

I enclose my Participation Information Sheet together with copies of my W-2 forms for the years "85" - "90" . My employment history at HHA is summarised as follows:

Start Date on 11/84 as Systems Engineer at \$27.00/hr:\$56,160/yr;  
1st increase, 04/85 as Systems Engineer at \$30.00/hr:\$62,400/yr;  
2nd increase, 12/86 as TEMS Manager at \$33.00/hr:\$68,640/yr;  
3rd increase, 06/87 as V.P. and Tech Dir. at \$35.00/hr:\$72,800/yr;  
End date on 01/91 as V.P. and Tech. Dir. at \$35.00/hr:\$72,800/yr.

Over the entire period of this experience, HHA was unable to make payroll consistently. As a result, at termination of employment, I was owed about 12 months salary.

Your efforts are appreciated

Sincerely,

  
Paul W. McCree, Jr.

**HHA Salary Arrears as of 1/25/91(14 missing checks)**

**"89"**

**Missing Checks    Checks Received**

**January        February**

**June        March**

**July        April**

**August        May**

**September**

**October**

**November**

**December**

**"90"**

**March        January**

**April        February**

**May        June**

**September        July**

**October        August**

**November**

**December**

**"91"**

**January**

**Attachments (3.0)**  
**Correspondence with HHA**  
**Re.**  
**Promotion and Salary**

**Attachments (4.0)**  
**The Plaintiff's**  
**HHA Check Stub Data**  
**1986 - 1990**

E A R N I N G S																	D E D U C T I O N S										NET AMOUNT		PERIOD ENDING
TOTAL HOURS				RATE				TOTAL EARNINGS	F.I.C.A.	FEDERAL WM/TAX	STATE WM/TAX	GHI								TOTAL DEDUCTIONS									
154				33.00				6072.00	431.15	1527.44	275.66														2237.25	3834.75	7/31		

SHAW-WALKER - COPY SPOT 15 7 FORM PG 12 MAB

EMPLOYEE'S STATEMENT OF EARNINGS AND DEDUCTIONS. RETAIN.

H. H. AEROSPACE DESIGN CO., INC.

86

TOTAL HOURS	E A R N I N G S									D E D U C T I O N S					NET AMOUNT	PERIOD ENDING
		RATE		TOTAL EARNINGS	F.I.C.A.	FEDERAL WM/TAX	STATE WM/TAX	GHI			TOTAL DEDUCTIONS					
176		35.00		6160.00	440.44	1359.71	270.53	120.96			2211.66	3948.34	6/30			

RAW-PAID - EMP. PAY E

176

35.00

6160.00

440.44

1359.71

270.53

120.96

2211.66

3948.34

6/30

SHAW-WALKER - COPY SPOT 15 7 FORM PG 12 MAB

EMPLOYEE'S STATEMENT OF EARNINGS AND DEDUCTIONS. RETAIN.

H. H. AEROSPACE DESIGN CO., INC.

87

EMPLOYEE EARNINGS AND DEDUCTIONS STATEMENT									
2683-00		HH AEROSPACE DESIGN CO INC				WK END DATE		PAY DATE	
3 3122		PAUL W MCCREE JR				M	3	3	MA
						033-16-4544			
RATES	HOURS		EARNINGS		TAXES		DEDUCTIONS		
35.000	REG	168.00	REG	5880.00	FFD	1194.84	BCBS	164.82	
35.000	HOL	8.00	HOL	280.00	FICA	462.62			
					ST	290.50			
				GROSS	6160.00	CHECK	1663	NET	4077.22
3668.00	1848.00	7090.64	2154.67	1614.00					

HH AEROSPACE DESIGN CO INC  
 Dept. 3 Emp. No. 3122 PAUL W MCCREE JR  
 Period Ending 06/30/89 Paydate 07/21/89 10  
 SSN 033-16-4544 Status M Exemptions fed. 3 st. 3 MA  
 Check no. 9798

	HOURS	RATES	EARNINGS	TAXES	YTD	DEDUCTIONS	YTD	Net Pay
REG	176.00	35.000	6160.00	FED 1174.84 FICA 462.62 ST 290.50	8067.08 3196.26 1893.00	BCBS 175.38	1195.98	4056.66
Gross Pay			6160.00					
Gross YTD			42560.00					

HH AEROSPACE DESIGN CO INC  
 Dept. 3 Emp. No. 3122 PAUL W MCCREE JR  
 Period Ending 05/31/90 Paydate 06/22/90 7  
 SSN 033-16-4544 Status M Exemptions fed. 3 st. 3 MA  
 Check no. 8478

	HOURS	RATES	EARNINGS	TAXES	YTD	DEDUCTIONS	YTD	Net Pay
REG	168.00	35.000	5880.00	FED 1228.83 FICA 492.66 ST 350.18	6667.38 2763.18 1825.60	BCBS 175.38	1052.28	4192.95
HOL	8.00	35.000	280.00					
VAC	8.00	35.000	280.00					
Gross Pay			6440.00					
Gross YTD			36120.00					